IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15910 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DY.EXECUTIVE ENGINEER,GUJARAT WATER SUPPLY & SEWERAGE BOARD & 1 - Petitioner(s)

Versus

KANESINH SARDARSINH PARMAR - Respondent(s)

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Appearance :

MR SHASHIKANT S GADE for Petitioner(s) : 1 - 2.

MR KR KOSHTI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/08/2005

ORAL JUDGMENT

By way of this petition under Article 227 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and award passed by the Labour Court, Himatnagar,

dated 14.10.2004 in Reference LCH No. 116/02 in allowing the said Reference directing the petitioners to reinstate the respondent-workman with full backwages from the date of termination till reinstatement with continuity of service.

2. The respondent was serving as a daily-wager Watchman, and it appears from the record and so observed by the Labour Court, Himatnagar that the respondent workman worked for 128 days in 1993; 247 days in 1994; 58 days in 1995; 206 days in 1996; 150 days in 1997; 196 days in 1998; 13 days in 1999; and 32 days in 2000; he was not offered work; and he was not on duty thereafter. Therefore the respondent approached the Assistant Labour Commissioner, Ahmedabad, by raising a dispute challenging his alleged termination in the year 2000 and thereafter the dispute was referred to the Labour Court, Himatnagar by way of Reference LCH. No. 116/2002. The Labour Court, Himatnagar, considering the fact that the respondent had worked for 247 days in the year 1994, i.e., more than the required 240 days and before termination the procedure as required under

Section 25-F was not followed; and neither any retrenchment compensation was paid nor any notice was issued, held by impugned judgment and award that the termination of the respondent by the petitioner is in breach of Section 25-F read with Section 25-B of the Industrial Disputes Act [“the I.D. Act” for short] and directed the petitioners to reinstate the respondent workman with full backwages and continuity of service. Being aggrieved and dissatisfied with the judgment and award impugned, the petitioners have preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri Gade, learned advocate appearing on behalf of the petitioners, has vehemently submitted that the respondent was serving as a Daily Wager; the respondent workman worked for 128 days in 1993; 247 days in 1994; 58 days in 1995; 206 days in 1996; 150 days in 1997; 196 days in 1998; 13 days in 1999; and 32 days in 2000; as and when work was available he was offered work; he was not offered work in the year 2000 and he has worked for only 32 days in the year 2000. He has further submitted that as in the

preceding year of alleged termination the respondent workman had not worked for more than 240 days, the Labour Court has materially erred in holding that there is a breach of Section 25-F read with 25-B of the I.D. Act. He has relied upon the judgment of the Division Bench of this Court dated 22.6.2005/23.6.2005 rendered in *Letters Patent Appeal No. 899 of 1998 in Special Civil Application No. 3806 of 1998 with Civil Application No. 6754 of 1998,* wherein the Division Bench has held that for availing benefit under Section 25-F read with Section 25-B of the I.D. Act the workman must prove that he has worked for more than 240 days in just preceding 12 calendar months. Therefore, it is requested to allow the present Special Civil Application.

4. Per contra, Shri Koshti, learned advocate appearing on behalf of respondent workman, while opposing the present Special Civil Application, has submitted that it is not necessary that for getting benefit of Section 25-F r/w. Section 25-B of the I.D. Act the workman is required to prove that he has worked for more than 240 days in the last preceding

12 months only. He has submitted that if in any year in the past the workman had worked for more than 240 days it is sufficient to attract the provisions of Section 25-F read with Section 25-B of the I.D. Act. He has further submitted that in the present case in the year 1994 the respondent workman had worked for 247 days and therefore the Labour Court has rightly held that the action of the petitioners in terminating the services of the respondent-workman is in breach of Section 25-F read with Section 25-B of the I.D. Act and passed the order of reinstatement accordingly. Relying upon Section 25-B of the I.D. Act he has submitted that if work was not offered it was due to cessation of work and not due to fault on the part of workman, and even if the respondent-workman has not worked it is to be held that the respondent is entitled to benefit of Section 25-B of the I.D.Act. He has relied upon the ratio of the judgment of the Hon'ble Supreme Court in the case of *Bank of Baroda Vs. Ghemarbhai Harjibhai Rabari, reported in 2005 AIR SCW 1817* and requested to dismiss the present Special Civil Application.

5. Heard the learned advocates appearing on

behalf of the parties. It is not in dispute that the respondent workman was serving as a daily-wager and as and when work was available he was offered work. It is also not in dispute and even so observed and held by the Labour Court while appreciating the evidence on record that the respondent workman has worked for 128 days in 1993; 247 days in 1994; 58 days in 1995; 206 days in 1996; 150 days in 1997; 196 days in 1998; 13 days in 1999; and 32 days in 2000. Thus, in the year 1998, the respondent had worked for only 196 days; in the year 1999 for 13 days; and in the year 2000 he had worked for only 32 days. The Labour Court has held that there is breach of Section 25-F and Section 25-B of the ID Act only considering the fact that in the year 1994 the respondent workman had worked for more than 240 days, i.e., 247 days. Now, therefore, the question, which requires consideration by this Court is whether for getting the benefit of Section 25-F read with Section 25-B of the ID Act the respondent workman should prove that he has worked for more than 240 days in the last preceding 12 months or in the past in any year. The said controversy in question is now already settled

by the Division Bench of this Court [Coram: Mr. R.S. Garg, J., and R.R. Tripati, J.] vide the aforesaid judgment and order dated 22/23.6.2005 rendered in Letters Patent Appeal No. 899 of 1998 in SCA No. 3806 of 1998 with C.A. No. 6754 of 1998. Considering the judgment of the Hon'ble Supreme Court in the case of *M/s. U.P. Drugs and Pharmaceuticals Co.Ltd. Vs. Ramanuj Yadav and Others, reported in (2004) SCC (L & S) 46,* wherein the Hon'ble Supreme Court referred its own judgment in the case of Mohan Lal Vs. Management of M/s. Bharat Electronics Ltd., as relied upon by the learned counsel for the appellant therein and specifically held that for Section 25-B mandates that an employee to show that he had worked for a period upto 240 days during the period of 12 calendar months preceding the date with reference to which calculation is to be made, the Division Bench has also held that for the purpose of entitlement to any benefit under Section 25(F) read with 25(B) of the I.D. Act, a workman has to prove that he has worked for 240 days and more in just preceding 12 calendar months. Under the circumstances, now considering the case on hand, the alleged date of termination of the respondent workman was 31.1.2000 and the respondent

workman had worked only for 32 days in the year 2000; and even in the year 1999 he had worked for 13 days; and 196 days in the year 1998. Thus, admittedly, the respondent workman had not worked for more than 240 days in the last preceding 12 months of 31.1.2000. When the principle laid down by the Division Bench of this Court in the Judgment referred to hereinabove is to be applied to the facts of the case on hand, the Labour Court, Himatnagar has materially erred in ordering reinstatement of the respondent workman with full backwages with continuity of service. Therefore, the Judgment cited at the Bar by the learned advocate appearing for the respondent workman in the case of Bank of Baroda (Supra) is not of assistance to the respondent workman as the controversy involved in the said case was different than what is raised in the present Special Civil Application, more particularly in that case the main dispute was with regard to non-appreciation of documentary evidence, whereas in the case on hand there is a finding of the Labour Court on appreciation of evidence with regard to the number of working days. In the facts and circumstances, the

judgment and award passed by the Labour Court impugned in the Special Civil Application requires to be quashed and set aside.

6. For the reasons stated hereinabove, the Special Civil Application is allowed. The Judgment and Award dated 14.10.2004 passed by the Labour Court, Himatnagar in Ref. LCH No. 116/02 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

[M.R. Shah, J.]

RMR.